

DEC 21 2009

IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN
DISTRICT OF TEXAS – HOUSTON DIVISION

Clerk of Court

12:33 pm

IN RE:	§	
NORTHPARK OFFICE TOWER, LP	§	INVOLUNTARY FILING Chapter 11
	§	
Debtor	§	Case No. 09-39205

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

COMES NOW, NORTHPARK OFFICE TOWER, LP and files this their Motion to Dismiss for Failure to State a Claim and would respectfully show the court the following:

Petitioner Kevin Orton is not a creditor to NorthPark Office Tower, LP. Petitioner Kevin Orton claims the nature of the claim to be a guarantee of the amount of \$2,900,321.52. This form of claim does not give Petitioner proper creditor status under § 303 of the bankruptcy code. Petitioner Kevin Orton is the guarantor on a note of that amount due to ERPILE, LLC.

NorthPark requests that Petitioner's involuntary petition be dismissed, that the Court award attorney's fees, costs and all other relief to which NorthPark may be entitled.

Respectfully submitted,

Richard E. Wakeland


Richard E. Wakeland

SBN: 00788912
2500 West Loop South, Suite 255
Houston, TX 77027
713-789-7654
713-789-3331 facsimile
Attorney for movant, NorthPark

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above pleading was served on all parties in interest as listed below by depositing the same in the U.S. mail, postage prepaid on the 21 of December, 2009.



Richard E. Wakeland

Trustee
U.S. Trustee
Office of the Trustee
515 Rusk Ave., STE 3516
Houston, TX 77002

Alan Gerger
Dunn, Neal & Gerger, LLP
3050 Post Oak Blvd., Ste 400
Houston, TX 77056

Creditors
Stephen G. Hunt
550 Westcott, Suite 350
Houston, TX 77007

Ciano Pasta
5718 Westheimer, Suite 940
Houston, TX 77057

Anthony Nims
Linebarger Goggan
1301 Travis, Suite 300
Houston, TX 77002

Brian Kilmer
3102 Maple Ave, Suite 450
Dallas, TX 75201